however not in a position to meet. An application for an adjournment was therefore refused.

In this case it is true there is nothing in the record to show at whose instance the several adjournments were made before counsel were retained. It may have been at the request of the respondent.

In considering the circumstances of this case I therefore allowed the appeal and ordered a retrial before another Magistrate.

I do not however intend this to be regarded as a precedent or to give the impression that an application for an adjournment should automatically follow the production of a medical certificate from counsel. Each case should be considered on its merits.

Appeal allowed.

Re RADHA KRISHNA NAIDU

[R. Cr. J. (Hepworth J.) November 24, 1961]

[Penang — Criminal Revision No. 7 of 1961]

Criminal Procedure — Appeal against acquittal — Private summons — Criminal Procedure Code (Cap. 21), ss.300 and 302.

Criminal Procedure — Revision — Exercise of revisional power — Criminal Procedure Code (Cap. 21), s.322

In a private summons, the learned Magistrate, after hearing the evidence of the complainant and his witnesses, dismissed the case and acquitted the accused without calling upon him for his defence, and without hearing submissions by counsel for either party. Counsel for the complainant tried to file a notice of appeal but it was rejected by the Magistrate's Court by virtue of section 300 of the Criminal Procedure Code because the appeal had not been preferred by the Public Prosecutor. Counsel then made a written submission to the Magistrate that section 302 of the Code gives the complainant the right to appeal as a private summons does not need the sanction of the Deputy Public Prosecutor. This was also rejected on the ground that section 300 is a specific section and section 302 is a general section and section 302 cannot be read in isolation from section 300.

The question was then submitted to the High Court with a view to its acting in revision.

Held: section 300 can be read together with section 302 without doing violence to the language of either. Section 300 means exactly what it says, that is that when an accused person has been acquitted by a Sessions or Magistrates' Court there shall be no appeal except by the Public Prosecutor; and section 302 makes it incumbent upon the Public Prosecutor if he is minded to appeal in such circumstances to lodge his notice of appeal within 10 days from the time of the order of acquittal and otherwise comply with the provisions of that section.

Passage in *Mallal's* Criminal Procedure, 4th Edn., p. 452 adopted.

Observations on the exercise of revisional powers by the High Court.

Cases referred to:—

(1) *Mandal* v. *Mandal*, I.L.R. 44 Cal. 703.

(2) *Rai* v. *Dass*, I.L.R. 5 Pat. 25.

CRIMINAL REVISION.

Revision made in Chambers, parties not present.

Hepworth J.: In Private Summons Case No. P(2) 3328 of 1961 in the Second Magistrate's Court, Penang, the learned Magistrate, after hearing the evidence of the complainant and his witnesses, dismissed the case and acquitted the accused without calling upon him for his defence and without hearing submissions by counsel for either party. Counsel for the complainant tried to file a Notice of Appeal but the Notice was rejected by the Magistrate's Court by virtue of the provisions of section 300 of the Criminal Procedure Code because the appeal had not been preferred by the Public Prosecutor.

Counsel for the complainant then made a submission to the Magistrate in writing that section 302 of the Criminal Procedure Code gives the complainant the right to appeal as a private summons does not need the sanction of the learned Deputy Public Prosecutor. The learned Magistrate rejected this submission on the ground that section 300 is a specific section and section 302 is a general section and section 302 cannot be read in isolation from section 300. The matter was also referred to the learned Deputy Public Prosecutor who agreed with the views of the learned Magistrate.

The question has now been submitted to me with a view to my acting in revision.

I must preface my remarks by saying that the Deputy Public Prosecutor has not at any time been invited to file a notice of appeal in this case.

Counsel for the complainant argues that as the Criminal Procedure Code (Amendment) Ordinance, 1938, deleted the words "or 299 or 300" in sub-section (1) of section 302, section 302 is no longer subject to section 300.

Prior to the coming into force of the Criminal Procedure Code (Amendment) Ordinance, 1938, there was a sub-section (2) to section 300 which required the petition of appeal against an acquittal to be lodged within 14 days from the date of judgment. By deleting sub-section (2) and leaving sub-section (1) of section 300 as it was (except for the deletion of the "(1)") and deleting the words and figures "or 299 or 300" in sub-section (1) of section 302 an appeal against an acquittal became subject to the ordinary procedure for appeal provided by sub-section (1) of section 302, that is to say the lodging of a notice of appeal within 10 days from the time of the judgment. It also had the effect of applying the ordinary procedure to appeals under section 299 for which no procedure was previously provided. But these amendments in no way affected sub-section (1) of section 300 except that it ceased to be sub-section (1) and became simply section 300.

To give section 302 the meaning urged by the petitioner would be to render section 300 redundant because the Public Prosecutor, when a party, could appeal against an acquittal under the provisions of section 302. Section 300 can be read together with section 302 without doing

violence to the language of either. In my opinion section 300 means exactly what it says, that is that when an accused person has been acquitted by a Sessions or Magistrates' Court there shall be no appeal except by the Public Prosecutor, and section 302 makes it incumbent upon the Public Prosecutor if he is minded to appeal in such circumstances to lodge his notice of appeal within 10 days from the time of the order of acquittal and otherwise comply with the provisions of that section.

In England there is no provision for appeal against acquittal except under certain express statutory provisions. An appeal against acquittal is an extraordinary remedy and the right to appeal against acquittal is deliberately confined to the Public Prosecutor in order to protect the prisoner and in order to prevent personal vindictiveness from seeking to call in question a judgment of acquittal by way of appeal. It is clearly the intention of the legislature that there should not ordinarily be interference except in cases where there has been a miscarriage of justice so serious that the Public Prosecutor considers that there ought to be an appeal. (See *Mallal's* Criminal Procedure, 4th edition, page 452).

It is, however, necessary for me to consider what action I should take, if any, on revision as there is no doubt about the jurisdiction of this Court either upon an application of a private individual or when the case is referred to it by a Magistrate that this Court can interfere by way of revision under the provisions of section 322 of the Criminal Procedure Code. In such cases if the Public Prosecutor has not preferred an appeal under section 300 the High Court ought not to interfere under section 322. It should only exercise revisional powers in exceptional cases when there has been a denial of the right of a fair trial or it is urgently demanded in the interests of public justice. In my opinion the legislature does not intend that a private party shall secure by an application in revision a right which is reserved for the Public Prosecutor only. (See *Mandal* v. *Mandal* [1], *Rai* v. *Dass* [2] and *Mallal's* Criminal Procedure, 3rd edition, page 379).

In my view this is not a case in which I ought to interfere and accordingly there will be no order on the revision.

No order on the revision.

MEE LIAN CO. v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) December 19, 1961]

[Muar — Criminal Appeal No. 71 of 1961]

Criminal Procedure — Charge — Not a body corporate — Necessity of drafting correct charges against the correct person and of proving to the satisfaction of the Court all ingredients of the charge — Duty of Court to see that the charge is properly drawn at the time it is read and explained to the defendant.

CRIMINAL APPEAL.

R. Ramason for the appellant.

Hamzah bin Dato Abu Samah (Deputy Public Prosecutor) for the respondent.

Adams J.: This was an appeal by the appellant against the conviction under section 13(i) of the Rubber Dealers Enactment No. 65 of 1935, Laws of Johore, by the learned Magistrate Tuan Syed Hussain Jamallulil. The appellant was charged as follows:

"Mee Lian Company (by manager Hua Kang Lee)
113 Main Road, Yong Peng.

Y. Peng Rpt.241/61.

That you on 19.6.61 at about 3.00 p.m. at premises No. 113, Main Road, Yong Peng, in the State of Johore, being the licensed Rubber Dealer did purchase 73 katties of rubber sheets from one Adnan bin Omar without any written authority delivered to you by the vendor for the sale thereof, and that you have thereby committed an offence under section 13(i) and punishable under section 18 of the Rubber Dealers Enactment No. 65/35."

The Deputy Public Prosecutor did not support the conviction because the prosecution failed to prove the main ingredient of the charge. namely, that the appellant was a licensed rubber dealer.

I would like to point out however that the person to be charged in this case should have been Hua Kang Lee and not the Mee Lian Company which is not a body corporate. I must yet again draw the attention of Prosecuting Officers to the necessity of drafting correct charges against the correct person and also of proving to the satisfaction of the Court all the ingredients of the charge. Finally, it is the duty of the Court to see that the charge is properly drawn at the time it is read and explained to the defendant. This clearly could not have been done in this case.

The appeal must be allowed and the fine repaid.

Appeal allowed.